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**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

IN RE: BABY FOOD PRODUCTS LIABILITY  
LITIGATION

This Document Relates To:

BROOKE MANNING on Behalf of C.M., A  
MINOR,

*Plaintiff,*

v.

Gerber Products Company, Nestlé S.A.,  
Walmart, Inc., and DOES 1 through 10 inclusive

*Defendants.*

Case No. 24-MD-3101-JSC

MDL 3101

Hon. Jacqueline Scott Corley

**COMPLAINT AND JURY DEMAND**

**Case no.:** 3:25-cv-1081

## INTRODUCTION

1  
2 1. Defendants *knowingly* sold baby food products contaminated with lead, arsenic,  
3 mercury, cadmium, and aluminum (collectively “Toxic Heavy Metals”). They did this knowing  
4 that Toxic Heavy Metals, when consumed by babies, are known to cause brain damage and  
5 neurodevelopmental harm. Thus, to the extent Defendants sold baby food that contained  
6 detectable amounts of Toxic Heavy Metals (collectively “Contaminated Baby Food”) those  
7 products were defective in their manufacture, design, and labeling. Babies are the most  
8 vulnerable segment of the population, and they rely on that food for healthy neurodevelopment.  
9 Defendants justify this callous disregard for the welfare of babies because, until recently, there  
10 were no regulations governing the presence of Toxic Heavy Metals in baby foods—and,  
11 because there were no regulations, they were free to do as they pleased.

12 2. This lawsuit aims to stop Defendants from poisoning infants with Contaminated  
13 Baby Food. Baby food *should* be safe. It should *not* be contaminated with Toxic Heavy  
14 Metals. Period. By sourcing ingredients from farms that have non-detectable levels of heavy  
15 metal (using sufficiently sensitive testing), avoiding certain ingredients all together, and  
16 systematically testing and screening finished products for Toxic Heavy Metals *before* the foods  
17 are released for consumption, these Defendants would be able to provide baby food products  
18 free of detectable levels of Toxic Heavy Metals. And, if some levels are truly unavoidable, or if  
19 Defendants believe the identified levels are safe, then, at the very least, Defendants must warn  
20 parents/guardians/caregivers about the presence of these Toxic Heavy Metals so they can make  
21 informed decisions about what they are feeding their baby. Anything short of proper design,  
22 manufacture, and warning, is unacceptable—especially for an industry that touts itself as  
23 providing the most important sources of neurodevelopment for the most vulnerable population  
24 of society.

25 3. Plaintiff, here, lives with brain injuries and neurodevelopmental harm caused by  
26 exposure to the Defendants’ Contaminated Baby Food, which has manifested in a diagnosis of  
27 autism spectrum disorder (“ASD”). Plaintiff’s parents were never warned that the Defendants’  
28 food contained Toxic Heavy Metals and, thus, were never able to make an informed decision

about whether to feed their babies Defendants Contaminated Baby Foods. The consequences are stark—there is an unprecedented epidemic of ASD and ADHD spreading throughout the American population, driven, in part, by the systematic neurodevelopmental poisoning of infants from these Defendants’ Contaminated Baby Foods.

4. This case seeks to hold the Defendants accountable for their reprehensible conduct by compensating Plaintiff who was harmed by the Defendants’ Contaminated Baby Foods, and ensure each Defendant is punished to deter such conduct in the future.

## PARTIES

### I. Plaintiffs

5. Plaintiff is a child who lives with brain injuries and neurodevelopmental harm caused by exposure to the Defendants’ Contaminated Baby Food, which has manifested in a diagnosis of ASD.

6. Plaintiff consumed baby foods manufactured and/or sold by Gerber Products Company.

7. Plaintiff consumed baby foods sold by Walmart, Inc.

8. The baby foods manufactured by Defendant Gerber and consumed by Plaintiff were manufactured at the direction of, and/or under the control of, and/or according to the specification of, and/or with input from the parent company, Nestlé S.A.

9. Plaintiff alleges that as a direct and proximate result of Plaintiff’s exposure to Toxic Heavy Metals from consumption of Defendants’ Contaminated Baby Foods, they suffered significant harm, conscious pain and suffering, physical injury and bodily impairment including, but not limited to, brain injury manifesting as the neurodevelopmental disorder ASD, other permanent physical deficits, permanent bodily impairment, and other *sequelae*. Plaintiff’s injuries required medical intervention to address the adverse neurological effects and damage caused by exposure to Toxic Heavy Metals in Defendants’ Contaminated Baby Foods. Additionally, Plaintiff has suffered severe mental and physical pain, including but not limited to, pain, mental suffering, loss of enjoyment of life, disfigurement, physical impairment, inconvenience, grief, anxiety, humiliation, and emotional distress and has and will sustain such

1 injuries, along with economic loss due to medical expenses and living-related expenses as a  
2 result of lifestyle changes, into the future, as determined by the Trier of Fact.

3 10. The product warnings for the Contaminated Baby Foods in effect during the time  
4 period Plaintiff consumed the Contaminated Baby Foods were non-existent, vague, incomplete  
5 and/or otherwise inadequate, both substantively and graphically, to alert consumers to the  
6 presence of Toxic Heavy Metals in the Contaminated Baby Foods and/or the potentially severe  
7 health risks associated with Toxic Heavy Metal exposure in babies. Thus, each Defendant did  
8 not provide adequate warnings to consumers including Plaintiff, their parents, and the general  
9 public about the presence of Toxic Heavy Metals in the Contaminated Baby Foods consumed  
10 by Plaintiffs and the potential risk of the serious adverse events associated with Toxic Heavy  
11 Metal exposure in infancy.

12 11. Had Plaintiff or their parents, been adequately warned by the Defendants of the  
13 potential for exposure to Toxic Heavy Metals from consumption of Defendants' Baby Foods,  
14 and/or the potential for such exposure to result in harm, Plaintiff, or their parents, would not  
15 have purchased, used and/or consumed Contaminated Baby Foods or would have taken other  
16 steps to potentially mitigate the harm caused by exposing a baby to Toxic Heavy Metals.

## 17 **II. Defendants**

18 12. The following are the Defendants listed in this Complaint. In alphabetical order:

- 19 1. Gerber Products Company ("Gerber")
- 20 2. Nestlé S.A. ("Nestlé")
- 21 3. Walmart, Inc. ("Walmart")

22 13. Defendant Gerber Products Company ("Gerber") is a citizen of Michigan and  
23 Virginia with its principal place of business located at 1812 N. Moore Street, Arlington,  
24 Virginia 22209. Gerber sells Baby Foods under the brand name Gerber. Gerber organizes its  
25 products into broad categories of "formula," "baby cereal," "baby food," "snacks," "meals &  
26 sides," "beverages," and "organic." At all relevant times, Gerber has conducted business and  
27 derived substantial revenue from its manufacturing, labeling, advertising, distributing, selling,  
28 and marketing of baby foods.

1           14. Defendant Nestlé is a citizen of Switzerland, with its principal place of business  
2 located at Avenue Nestlé 55, 1800 Vevey, Switzerland. Nestlé is a global food and beverage  
3 company with more than 2,000 brands. Nestlé sells baby foods under its subsidiary, Gerber.  
4 Employees and scientists at Nestlé trained and set safety standards at Gerber. Indeed, in  
5 discovery ongoing in other litigation, Gerber specifically identified scientists at Nestlé to testify  
6 on behalf of Gerber regarding the safety of Gerber's baby food products. Nestlé, thus, has been  
7 directly involved in the tortious conduct in the United States and its various states that gives rise  
8 to these lawsuits. At all relevant times, Nestlé conducted business and derived substantial  
9 revenue through Gerber by manufacturing, advertising, distributing, selling, and marketing baby  
10 foods within the judicial districts involved in this litigation.

11           15. The relationship between Gerber and Nestlé was formed in 2007. Prior to that,  
12 starting in 1994, Gerber was owned and operated by Novartis, one of the largest pharmaceutical  
13 companies in the world. However, in 2007, Gerber was sold to Nestlé for \$5.5 billion.

14           16. For the purposes of this Complaint, unless specifically stated otherwise, Nestlé  
15 shall be referred to as "Nestlé." Further, allegations related to Gerber apply equally to Nestlé, as  
16 each Defendant exercised authority and control over the sale, manufacture, and distribution of  
17 Gerber's Contaminated Baby Foods at issue in this MDL.

18           17. Defendant Walmart, Inc. ("Walmart") is a citizen of Delaware and Arkansas  
19 with its principal place of business located at 702 S.W. 8th St. Bentonville, Arkansas 72716.  
20 Walmart sells Baby Foods under the private label brand "Parent's Choice." The foods are  
21 manufactured by co-manufacturers, but are sold under Walmart's private label using Walmart's  
22 name. Walmart's Parent's Choice offers a wide selection of baby foods ranging from "sweet  
23 potatoes & corn" to "toddler cookies" and "yogurt bites". At all relevant times, Walmart has  
24 conducted business and derived substantial revenue from its manufacturing, advertising,  
25 distributing, selling, and marketing of Baby Foods within this judicial district and throughout  
26 the United States.

27 ///

28 ///

## JURISDICTION AND VENUE

18. Plaintiff(s) file this Complaint pursuant to CMO No. 5, and are to be bound by the rights, protections, and privileges, and obligations of that CMO and other Order of the Court. Further, in accordance with CMO No. 5, Plaintiff(s) hereby designate the United States District Court for the Middle District of Florida as Plaintiff's designated venue ("Original Venue"). Plaintiff makes this selection based upon one (or more) of the following factors (check the appropriate box(es))

☒ Plaintiff currently resides in Pensacola, Florida.

☒ Plaintiff purchased and consumed Defendant(s) products in Florida.

☐ The Original Venue is a judicial district in which Defendant \_\_\_\_\_ resides, and all Defendants are residents of the State in which the district is located (28 U.S.C. 1391(b)(1)).

☒ The Original Venue is a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, specially (28 U.S.C. 1391 (b)(2)):

☐ There is no district in which an action may otherwise be brought under 28 U.S.C. 1391, and the Original Venue is a judicial district in which Defendant \_\_\_\_\_ is subject to the Court's personal jurisdiction with respect to this action (28 U.S.C. 1391 (b)(3)).

☐ Other reason (please explain): \_\_\_\_\_

19. As an MDL transferee court, this Court has subject matter and personal jurisdiction to the same extent as the respective transferee courts do. In general, federal courts have subject matter jurisdiction over this action under 28 U.S.C. § 1332(d) because Plaintiffs are citizens of states other than states where Defendants are citizens. In addition, Plaintiff seeks damages in excess of \$75,000, exclusive of interest and costs.

20. This Court has personal jurisdiction over Defendants because their significant contacts related to this litigation in each State make personal jurisdiction proper over any of them.

21. In particular, this Court has personal jurisdiction over Defendants for cases filed in this District insofar as Defendants are authorized and licensed to conduct business in the

1 State of California, maintain and carry on systematic and continuous contacts in this judicial  
 2 district, regularly transact business within this judicial district, and regularly avail themselves of  
 3 the benefits of this judicial district.

4 22. Additionally, Defendants caused tortious injury by acts and omissions in this  
 5 judicial district and caused tortious injury in this district by acts and omissions outside this  
 6 district while regularly doing and soliciting business, engaging in a persistent course of conduct,  
 7 and deriving substantial revenue from goods used or consumed and services rendered in this  
 8 judicial district.

9 23. Nestlé is subject to personal jurisdiction in the relevant judicial districts insofar  
 10 as they are authorized and licensed to conduct business in their respective states. Additionally,  
 11 these Defendants maintain and carry on systematic and continuous contacts in these judicial  
 12 districts, regularly transact business within these districts, and regularly avail themselves of the  
 13 benefits of these districts. These Defendants caused tortious injury by acts and omissions in  
 14 these judicial districts and by acts and omissions outside these districts while regularly doing  
 15 and soliciting business, engaging in a persistent course of conduct, and deriving substantial  
 16 revenue from goods used or consumed and services rendered in these districts.

## 17 **FACTUAL ALLEGATIONS**

### 18 **I. Rising Concerns Regarding the Presence of Toxic Heavy Metals in Baby Foods**

19 24. In October 2019, an alliance of nonprofit organizations, scientists and donors  
 20 named “Happy Babies Bright Futures” (“HBBF”), dedicated to designing and implementing  
 21 “outcomes-based programs to measurably reduce babies’ exposures to toxic chemicals,”  
 22 published a report investigating the presence of Toxic Heavy Metals in baby foods. The HBBF  
 23 Report tested 168 different baby foods sold on the U.S. market and concluded that “[n]inety-  
 24 five percent of baby foods tested were contaminated with one or more of four toxic heavy  
 25 metals—arsenic, lead, cadmium and mercury. All but nine of 168 baby foods contained at least  
 26 one metal; most contained more than one.” Specifically, the HBBF report identified “puffs and  
 27 other snacks made with rice flour,” “[t]eething biscuits and rice rusks,” “infant rice cereal,”  
 28 “apple, pear, grape and other fruit juices,” and “carrots and sweet potatoes” manufactured by

1 the Defendants as particularly high in Toxic Heavy Metals.

2 25. The results of the HBBF report were consistent with that of the U.S. Food and  
3 Drug Administration (“FDA”) which had, in 2017, detected one or more of the four Toxic  
4 Heavy Metals in 33 of 39 types of baby food tested. However, the HBBF reported that “[f]or  
5 88 percent of baby foods tested by HBBF—148 of 168 baby foods—FDA has failed to set  
6 enforceable limits or issue guidance on maximum safe amounts.” The HBBF’s findings were  
7 by no means an outlier. Eight months prior to publication of the HBBF report, a study  
8 conducted by scientists at the University of Miami and the Clean Label Project “examined  
9 lead...concentrations in a large convenience sample of US baby foods.” The study detected  
10 lead in 37% of samples.

11 26. Moreover, earlier in 2017, HBBF commissioned a study to evaluate the presence  
12 of arsenic in infant rice cereal products sold in the U.S., and the potential risks to children’s  
13 neurodevelopment posed by contamination levels. The findings were concerning. The authors  
14 concluded that “exposures to arsenic from infant rice cereal approach or exceed existing health-  
15 based limits for arsenic levels...leaving little room for additional exposures from other dietary  
16 sources, such as snacks, apple juice, and drinking water...Our analyses of arsenic exposures  
17 from infant rice cereal during the first year of life suggest that these exposures are not  
18 insignificant, and may place infants at risk for adverse health effects.”

19 **II. Congressional Investigation Finds Substantial Presence of Heavy Metals in Baby**  
20 **Foods Manufactured and/or Sold by Defendants, Sparking National Outrage**

21 27. On February 4, 2021, and September 29, 2021, respectively, the U.S. House of  
22 Representatives’ Subcommittee on Economic and Consumer Policy, Committee on Oversight  
23 and Reform, published two reports detailing its findings that Toxic Heavy Metals—including  
24 lead, arsenic, mercury, and cadmium—were present in “significant levels” in numerous  
25 commercial Baby Food Products. Four companies—Hain, Gerber (Nestlé), Nurture (Danone),  
26 and Beech-Nut—produced internal testing policies, test results for ingredients and finished  
27 products, and documentation about what the companies did with ingredients and/or finished  
28 products that exceeded their internal testing limits. Three companies—Plum (Campbell),



1 Walmart, and Sprout—initially refused to cooperate.

2 28. Congress reported that the data submitted by the companies unequivocally  
3 revealed that a substantial number of Defendants’ finished products and/or ingredients used to  
4 manufacture the Baby Foods are tainted with Toxic Heavy Metals, namely lead, arsenic,  
5 mercury, and cadmium. And, where the Defendants did set internal limits for the amount of  
6 metals they allowed in their foods, Defendants routinely flouted their own limits and sold foods  
7 that consistently tested above their limits. Congress found the following:

8 29. **Gerber.** Gerber along with Nestlé used high-arsenic ingredients, using 67  
9 batches of rice flour that had tested over 90 ppb inorganic arsenic. Nestlé and Gerber used  
10 ingredients that tested as high as 48 ppb lead; and used many ingredients containing over 20  
11 ppb lead. Nestlé and Gerber rarely test for mercury in their baby foods. In the September 2021  
12 follow-up Congressional report, it was revealed that Nestlé and Gerber’s rice cereal tested up to  
13 116 ppb inorganic arsenic, and their average rice cereal product contained 87.43 ppb inorganic  
14 arsenic, which is even higher than the amount contained in Beech-Nut’s average rice cereal  
15 product. While Beech-Nut recalled some of its products and completely discontinued sales of  
16 its rice cereal, Nestlé and Gerber have taken no such actions to protect children.

17 30. **Walmart.** Walmart refused to cooperate with the House Subcommittee’s  
18 investigation into its baby foods products, and as such, the Subcommittee was “greatly  
19 concerned” that Walmart “might be obscuring the presence of higher levels of toxic metals in  
20 their baby food products.” The Subcommittee noted that independent data from the HBBF  
21 Report confirmed that Walmart’s baby foods are indeed tainted. For example, the HBBF Report  
22 observed that one of Walmart’s products contained 56.1 ppb total arsenic, and 26.1 ppb cadmium.  
23 Another product contained 108 ppb total arsenic, 66 ppb inorganic arsenic, 26.9 ppb lead, and  
24 2.05 ppb mercury.

25 31. Following the publication of the Subcommittee Report, Walmart provided  
26 documents to the Subcommittee. On September 29, 2021, the House Subcommittee released a  
27 subsequent report entitled “New Disclosures Show Dangerous Levels of Toxic Heavy Metals in  
28 Even More Baby Foods.” The Subcommittee report addendum described the documents from

1 Walmart as “revealing a concerning lack of attention to toxic heavy metal levels in baby food  
2 and an abandonment of its previously more protective standards.” Walmart does not appear to  
3 conduct any testing of its baby food products. Walmart sets maximum arsenic and lead levels  
4 and asks the manufacturer of its private label to self-certify, but Walmart does not appear to  
5 collect any test data or check the accuracy of those certifications. Walmart does not require any  
6 mercury or cadmium testing and does not set any standards for mercury or cadmium levels.

7 32. The metal concentrations discussed above and further below surpass the limits  
8 allowed by U.S. regulatory agencies. There are no FDA final regulations governing the  
9 presence of Toxic Heavy Metals in the majority of Baby Foods with the exception of 100 ppb  
10 inorganic arsenic in infant rice cereal and proposed (not yet final) limits for lead in certain baby  
11 food categories. To the extent such regulations exist, the quantities of Toxic Heavy Metals in  
12 Defendants’ Baby Foods exceed any permissible FDA levels. To be sure, the FDA has set the  
13 maximum contaminant levels (“MCL”) in bottled water at 10 ppb inorganic arsenic, 5 ppb lead,  
14 and the EPA has capped the allowable level of mercury in drinking water at 2 ppb. However,  
15 these limits were created in reference to *adult* exposure, not infants. Compared to these  
16 thresholds, the test results of the Defendants’ baby foods and their ingredients are multiple folds  
17 greater than the permitted metal levels. Moreover, compounding these troubling findings, the  
18 Defendants set internal limits for the presence of Toxic Heavy Metals in their foods that were,  
19 themselves, dangerously high and then routinely failed to abide by those inadequate standards,  
20 as discussed below.

21 33. As Congress observed, the Defendants have willfully sold—and continue to  
22 sell—contaminated Baby Foods notwithstanding their full awareness of these unacceptably high  
23 levels of Toxic Heavy Metals in their products.

### 24 **III. Defendants Engaged in a Pattern and Practice of Selling Contaminated Baby** 25 **Foods and Failed to Reduce Metal Levels**

26 34. Several factors drive the Toxic Heavy Metal contamination of Defendants’ baby  
27 foods, all of which are within Defendants’ control.

28 35. *First*, at various times, all Defendants sourced ingredients that contained

1 elevated levels of Toxic Heavy Metals. These ingredients were then used to manufacture the  
2 baby foods consumed by Plaintiffs, thereby exposing Plaintiffs to Toxic Heavy Metals that  
3 cause brain damage and other neurodevelopmental harm. One way for Defendants to “deal”  
4 with this issue involved relegating any testing of Toxic Heavy Metals to suppliers and co-  
5 manufacturers, who were required to certify that Toxic Heavy Metals were below a certain  
6 threshold. Defendants would audit those results, discover that the reported certifications were  
7 false or inaccurate, and then take no action to stop the use of those ingredients or finished  
8 products.

9       36.     *Second*, some Defendants implemented dangerously high internal limits  
10 (“specifications” or “specs”) for the maximum level of Toxic Heavy Metals that Defendants  
11 allowed in the baby foods. Such high limits—untethered to any consideration of the low levels  
12 at which metals are capable of damaging babies’ brains—allowed Defendants to source and use  
13 ingredients that contained elevated Toxic Heavy Metals to manufacture the baby foods  
14 consumed by Plaintiffs. In the highly competitive and lucrative baby food market, using  
15 contaminated ingredients allows each Defendant to retain greater market share.

16       37.     *Third*, some Defendants failed to implement *any* internal specifications for the  
17 amount of Toxic Heavy Metals allowed in ingredients or finished baby foods. By simply not  
18 looking at the issue, certain highly contaminated ingredients and finished products were allowed  
19 to be used and sold to consumers. This would happen notwithstanding the Defendants’ specific  
20 knowledge of the risk of Toxic Heavy Metals and their presence in ingredients and finished  
21 products.

22       38.     *Fourth*, Defendants did not routinely adhere to their own internal metal  
23 specifications or standards, allowing contaminated ingredients and finished products to be  
24 released as “exceptional releases” or other simpler terminology. This resulted in ingredients  
25 being used and baby foods manufactured and sold that contained levels of Toxic Heavy Metals  
26 far higher than what was internally set by Defendants. In other instances, Defendants would  
27 test products that had been put on the market after-the-fact, learn about the products containing  
28 extremely high levels of Toxic Heavy Metals, and then take no action to recall the product or

1 warn consumers about the issue.

2 39. *Fifth*, upon information and belief, Defendants' manufacturing practices also  
3 contributed to contamination. For example, the water used at some of the facilities where the  
4 baby foods were manufactured contained Toxic Heavy Metals which, in turn, ended up in the  
5 finished baby food product sold for consumption by babies.

6 40. **Gerber.** Gerber and Nestlé tested ingredients and, occasionally, finished  
7 products. However, while Gerber and Nestlé were the only Defendants to test both ingredients  
8 and finished products with any regularity, they set high heavy metal limits that rendered their  
9 food unsafe. For baby foods generally, between 2012 and 2019, Gerber and Nestlé set a limit of  
10 40 ppb for lead, 20 ppb for arsenic, and 10 ppb for mercury. For infant rice cereal, between  
11 2012 and 2017, Gerber and Nestlé set a lead limit of 100 ppb, with a "target" of 50 ppb in 2016  
12 and 2017. Between 2018 and 2019, Gerber and Nestlé set a lead limit for 50 ppb. For arsenic  
13 in rice cereal, between 2012 and 2015, Gerber and Nestlé did not have a limit, merely a target of  
14 100 ppb. Then, between 2016 and 2018, it set the arsenic limit at 100 ppb. By 2019, Gerber  
15 and Nestlé increased the arsenic limit to 130 ppb for cereals with 90% rice (and kept the limit at  
16 100 ppb for other cereals). For snack foods, Gerber and Nestlé had a lead limit of 150 ppb  
17 between 2012 and 2014. It was reduced to 100 ppb in 2016 and 2017, and then went down to 50  
18 ppb in 2018 and 2019. There was no limit for arsenic in snack food prior 2016, just a "target"  
19 of 100 ppb. Then a 100-ppb arsenic limit was set starting in 2016. For both infant cereal and  
20 snacks, Gerber and Nestlé imposed a 30-ppb limit for mercury in infant cereal between 2012  
21 and 2016, and reduced it to 10 ppb from 2017 onward. With these exceptionally high limits,  
22 Gerber and Nestlé sold baby foods that were dangerous for infant consumption. They did this  
23 knowingly.

24 41. Gerber and Nestlé would also audit and re-test Toxic Heavy Metal results  
25 submitted by suppliers, and find that the certification from suppliers were incorrect or false.  
26 Gerber and Nestlé would nonetheless use the certified results and release products despite the  
27 ingredients not meeting specifications or being safe for infant consumption.

28 42. Gerber and Nestlé often used high-arsenic ingredients, for example, using 67

1 batches of rice flour that had tested over 90 ppb inorganic arsenic. Furthermore, Gerber and  
2 Nestlé regularly sold baby food products testing over 100 ppb arsenic, at times reaching 116  
3 ppb, and their average rice cereal product contained 87.43 ppb inorganic arsenic. Indeed, this is  
4 why Congress noted that “Gerber’s organic rice cereal is dangerous...” In other instances,  
5 Gerber permitted as much as 300 ppb of arsenic in the rice flour ingredient used to manufacture  
6 its U.S. baby foods, notwithstanding the fact that Gerber often implemented stricter standards  
7 for baby foods sold in other countries.

8 43. Gerber’s baby foods are also contaminated with elevated levels of lead. Gerber  
9 and Nestlé used ingredients that tested as high as 48 ppb lead and used many ingredients  
10 containing over 20 ppb lead. Furthermore, Gerber and Nestlé sold baby food products testing at  
11 and/or above 50 ppb of lead. Indeed, Gerber and Nestlé have historically permitted as much as  
12 150 ppb lead in their baby food products. Although Gerber and Nestlé were fully aware that it  
13 was very feasible to source lower-lead ingredients, they proceeded to use high-lead ingredients  
14 in their baby foods. Gerber and Nestlé rarely test for mercury in their baby foods. This is  
15 notwithstanding the fact that mercury is known to contaminate ingredients such as rice and  
16 poses a severe risk to babies’ brain development.

17 44. The February 4, 2021 Congressional Report found Gerber carrots tested for  
18 cadmium at levels above 5 ppb, with some containing more than 87 ppb of cadmium. These are  
19 exceptionally high levels.

20 45. Moreover, compounding these troubling findings, Gerber and Nestlé historically  
21 only tested certain ingredients of its baby food products and only occasionally tested the  
22 finished products consumed by babies. It was not until recently that Gerber and Nestlé started  
23 to implement finished product testing on a more regular basis.

24 46. Gerber and Nestlé have known since at least the 1990s that inorganic arsenic was  
25 neurotoxic and caused developmental issues. Despite this knowledge, in 2012, when Gerber’s  
26 infant rice cereal was on the front page of a Consumer Report article on arsenic, a Gerber  
27 spokesperson told the public that arsenic in baby food posed no health risk.

28 47. **Walmart.** Walmart sold baby food under a “private” brand called “Parent’s

Choice”, which was manufactured by a different supplier but branded, promoted, and sold as a Walmart product. Walmart did not test it for Toxic Heavy Metals whatsoever. Instead, Walmart required certain specifications be met for the products provided by its suppliers, which included some limits of heavy metals. These specifications were not enforced in any way. Walmart did not require the submission of testing from suppliers, nor did it do any of its own testing.

48. The only efforts to police Toxic Heavy Metals in their Parent’s Choice baby food involved generic specifications for lead and arsenic—there were no other specifications or limits for other Toxic Heavy Metals—which for most baby food products resulted in there being no limits. The following chart reflects Walmart’s Toxic Heavy Metal specifications prior to December 2018.

Type of Food	Lead	Arsenic	Mercury	Cadmium	Aluminum
Dry baby food with no juice or nectar	<i>None</i>	<i>None</i>	<i>None</i>	<i>None</i>	<i>None</i>
Dry baby food with juice or nectar	50 ppb	23 ppb	<i>None</i>	<i>None</i>	<i>None</i>
Wet baby food with no juice or nectar	<i>None</i>	<i>None</i>	<i>None</i>	<i>None</i>	<i>None</i>
Wet baby food with juice or nectar	50 ppb	23 ppb	<i>None</i>	<i>None</i>	<i>None</i>
Yogurt baby food products	<i>None</i>	<i>None</i>	<i>None</i>	<i>None</i>	<i>None</i>

49. In December 2018, Walmart changed its specification to 100 ppb of inorganic arsenic for all dry baby foods, making the products even less safe. Thus, for the vast majority of Walmart’s baby food products, there was never a limit for any Toxic Heavy Metals.

#### **IV. Defendants Abandon Efforts to Reduce Metal Levels in Baby Foods**

50. In 2019, as concerns grew over contamination of certain baby foods on the U.S. market, a consortium of the Baby Food Manufacturers comprised of Defendant Gerber as well as certain interested third party groups such as the Environmental Defense Fund (“EDF”) and HBBF, were formed with the intention “of reducing heavy metals in young children’s food.”

51. The consortium was named the Baby Food Council (“BFC”). The BFC involved the sharing of common testing data on the levels of metal contamination of Defendants’ baby foods, a grant to Cornell University to further study the issue, and a proposed “voluntary Baby

1 Food Standard to limit the amounts of heavy metals in baby food.” The BFC specifically  
2 recognized the risk of neurodevelopmental harm caused by Toxic Heavy Metals to the  
3 developing brain of infants and that there were no safe levels of exposure.

4 52. The Baby Food Standard “would have provided companies with a common  
5 framework for progressively reducing contaminants by regularly testing products and  
6 improving management practices, and for being transparent with consumers about the safety of  
7 their products.”

8 53. After several years of negotiations and discussions, including a proposed system  
9 for testing, the EDF and HBBF proposed voluntary limits of 1 ppb for lead. The baby food  
10 companies, however, rejected the proposal outright. Participation in the BFC was little more  
11 than a façade—they had no intention of self-regulating their products as it related to Toxic  
12 Heavy Metals.

13 54. This led EDF and HBBF to leave the BFC in protest in 2021. They explained  
14 their departure publicly, noting that Defendants “all decided to backpedal on this project—even  
15 though the standard was designed to protect babies’ brain development” and provide adequate  
16 notice to consumers regarding the presence of Toxic Heavy Metals on Baby Food labeling.  
17 EDF explained:

18 EDF cofounded the Council because we believed there was a shared commitment  
19 to reduce levels of lead, arsenic and cadmium in baby food products to better  
20 protect children’s developing brains from these toxins ... Unfortunately, the  
21 companies chose to cease the Council’s development of a voluntary Baby Food  
22 Standard that it had begun in late 2020. The Standard would have provided  
23 companies with a common framework for progressively reducing contaminants  
24 by regularly testing products and improving management practices, and for being  
25 transparent with consumers about the safety of their products. Negotiations failed  
26 to provide an alternative approach that EDF felt was sufficient to drive down  
27 levels of lead, arsenic and cadmium in baby food.”

28 55. HBBF explained:

Healthy Babies Bright Futures is focused on tangibly reducing neurotoxic  
exposures to babies. The baby food companies’ refusal to jointly set limits for  
heavy metals in baby food has shown that the Council will no longer be the  
powerful mechanism for this important work that the initial plans had promised.  
The baby food companies’ decision to stop progress on a voluntary standard for  
heavy metals in baby food is a disappointment ... What started as dedication has



1 turned into delay and intention has become inaction. So HBBF has decided to put  
2 our effort into other initiatives that will move the needle on this important issue.

3 56. In short, the Defendants opted to continue “self-regulating,” the same self-  
4 regulation which exposed—and continued to expose—Plaintiffs to Toxic Heavy Metals in  
5 Defendants’ baby foods.

## 6 **22. The Dangers of Toxic Heavy Metals and Metal Exposure Through** 7 **Consumption of Baby Foods**

8 57. According to the World Health Organization (“WHO”), Toxic Heavy Metals,  
9 specifically lead, arsenic, mercury, and cadmium pose a “major public health concern” for  
10 children. The Occupational Safety and Health Administration (“OSHA”) has warned that these  
11 metals “may build up in biological systems and become a significant health hazard.” Indeed,  
12 the Department of Health and Human Services’ Agency for Toxic Substances and Disease  
13 Registry (“ATSDR”) ranks arsenic as number *one* among substances present in the environment  
14 that pose the most significant potential threat to human health, followed by lead (second),  
15 mercury (third), and cadmium (seventh).

16 58. The threat presented by Toxic Heavy Metals to children’s health is widely shared  
17 by the global regulatory and scientific community. For example, the FDA has set an Interim  
18 Reference Level (“IRL”) of 2.2 micrograms/day for lead exposure through baby food products.  
19 That is the amount of lead exposure at or above which the agency considers associated with  
20 adverse neurodevelopmental effects in babies. The FDA, in its guidance documents for  
21 inorganic arsenic and lead in baby food products has repeatedly acknowledged the dangers of  
22 heavy metals to the neurodevelopment of infants.

23 Even low lead exposure can harm children’s health and development, specifically  
24 the brain and nervous system. Neurological effects of lead exposure during early  
25 childhood include learning disabilities, behavior difficulties, and lowered IQ.  
26 Lead exposures also may be associated with immunological, cardiovascular,  
27 renal, and reproductive and/or developmental effects...Because lead can  
28 accumulate in the body, even low-level chronic exposure can be hazardous over  
time...Even though no safe level of lead exposure has yet been identified for  
children's health, the IRL serves as a useful benchmark in evaluating the potential  
for adverse effects of dietary lead. In particular, FDA is focused on the potential  
for neurodevelopmental effects from lead exposure, as review of the scientific  
literature indicates that *such adverse effects of lead consistently occur at a blood*



1           *lead level associated with FDA's IRL for children.* (emphasis added).

2           59. As one recent study observed, “[t]he implications of heavy metals with regards  
3 to children’s health have been noted to be more severe compared to adults. The elements’  
4 harmful consequences on children health include mental retardation, neurocognitive disorders,  
5 behavioral disorders, respiratory problems, cancer and cardiovascular diseases. Much attention  
6 should be given to heavy metals because of their high toxicity potential, widespread use, and  
7 prevalence.” Children and, even more so, babies have higher exposure to metals compared to  
8 adults because they consume more food in relation to their body weight and absorb metals more  
9 readily than adults by 40 to 90%.

10           60. The mechanisms needed to metabolize and eliminate heavy metals are  
11 comparatively undeveloped in childhood, with babies having weaker detoxifying mechanisms  
12 and poorer immune systems than adults. For example, liver pathways that in adulthood  
13 metabolize absorbed arsenic do not mature until mid-childhood; un-excreted arsenic thus  
14 continues to circulate and is deposited in other organs. According to Linda McCauley, Dean of  
15 the Nell Hodgson Woodruff School of Nursing at Emory University, who studies environmental  
16 health effects, “[n]o level of exposure to these [heavy] metals has been shown to be safe in  
17 vulnerable infants.”

18           61. Thus, “the major windows of developmental vulnerability occur during infancy  
19 and early childhood due to continuing brain development after birth.” In short, even small  
20 amounts of exposure to Toxic Heavy Metals can have devastating health outcomes for babies  
21 and children.

22           **VI. Exposure to Toxic Heavy Metals Has Been Consistently Associated with**  
23           **Neurodevelopmental Harm, i.e., Autism and ADHD in Pediatric Populations**

24           62. It is well-known that exposure to Toxic Heavy Metals in early life can interfere  
25 with neurodevelopment at exceedingly low levels of exposure. And, one of the ways in which  
26 such interference with neurodevelopment can present in a child is in the form of the  
27 neurodevelopmental disorders ASD and ADHD. As the U.S. Centers for Disease Control  
28 observed in its 2020 Toxicological Profile for Lead, at just  $\leq 10$   $\mu\text{g/dL}$ : “The following

1 neurobehavioral effects in children have been associated with [lead]: “Altered mood and  
2 behaviors that may contribute to learning deficits, including *attention deficits, hyperactivity,*  
3 *autistic behaviors,* conduct disorders, and delinquency.” (emphasis added). Likewise, the NIH  
4 states: “prenatal and early childhood exposure to heavy metals...may be linked to autism  
5 spectrum disorder.”

6 63. Such conclusions have likewise been reached by a consortium of the country’s  
7 leading epidemiologists, pediatricians, and medical groups, noting that Toxic Heavy Metals  
8 such as lead and mercury are “prime examples of toxic chemicals that can contribute to  
9 learning, behavioral, or intellectual impairment, as well as specific neurodevelopmental  
10 disorders such as ADHD or autism spectrum disorder.”

11 64. Multiple studies, reviews, and meta-analyses conducted throughout various parts  
12 of the world over the last decade have consistently observed that early life exposure to heavy  
13 metals can cause brain injury and, specifically, brain injury which manifests as ASD.

14 65. For example, four meta-analyses published in 2014, 2017, 2019 and 2020,  
15 respectively, observed consistent associations between exposure to arsenic, cadmium, and  
16 mercury and ASD in children; with the authors in all three studies recommending – based on  
17 the data – that exposure to such metals in children be reduced as much as possible, and one of  
18 the study authors specifically concluding that “Results of the current meta-analysis revealed that  
19 mercury is an important causal factor in the etiology of ASD.”

20 66. In a recent 2017 NIH-funded prospective observational study, the authors  
21 examined the risk of ASD outcome in twins based on their respective body burden of lead. The  
22 study concluded in no uncertain terms that “prenatal and early childhood disruption (excess or  
23 deficiency) of multiple metals during critical developmental windows is associated with ASD,  
24 and suggests a role for elemental dysregulation in the etiology of ASD.”

25 67. Similarly, a large, prospective study from 2016 in Korean school children  
26 observed that low levels of lead exposure in early life are associated with autism, the authors  
27 specifically concluding: “even low blood lead concentrations...are associated with more autistic  
28 behaviors... underscoring the need for continued efforts to reduce lead exposure.”

1           68.     Studies have repeatedly observed strong associations between exposure to  
2     cadmium and aluminum and neurodevelopmental disorders such as ASD, as observed by a  
3     recent study: “Environmental exposure to...cadmium (Cd)... and aluminum (Al) has been  
4     associated with neurodevelopmental disorders including autism spectrum disorder (ASD).” For  
5     example, a study from 2014 evaluated the body burden of lead, cadmium, and arsenic in  
6     children with autism compared to controls and noted that, in addition to lead and arsenic, “our  
7     study demonstrated elevation in the levels of...cadmium...in a child with autism,” while an  
8     earlier study noted that “autism may be associated with significant alterations of some rare  
9     element concentrations, including Cd...” Such results have been confirmed by meta-analyses  
10    which “show *significant associations* between ASD and the metals Al [and] Cd.” And, such  
11    earlier data is further supported by recent research, with a 2023 systematic review and meta-  
12    analysis concluding that “compared with the healthy control group, the ASD group had higher  
13    concentrations of Cd, Pb, arsenic, and Hg. These 4 heavy metals play different roles in the  
14    occurrence and progression of ASD.”

15           69.     Repeated associations between early life Toxic Heavy Metal exposure and ASD  
16    have also been observed during the pre-natal timeframe, lending further strength to the findings  
17    of post-natal studies. For example, in a 2021 study by Skogheim and colleagues, the authors  
18    prospectively assessed the relationship between pre-natal metal exposure in various biomarkers  
19    and autism risk. The study concluded that “[r]esults from the present study show several  
20    associations between levels of metals and elements during gestation and ASD and ADHD in  
21    children. The most notable ones involved arsenic...mercury...and lead. Our results suggest that  
22    even population levels of these compounds may have negative impacts on neurodevelopment.”

23           70.     Similarly, in a study by the research group assessing the New Hampshire Birth  
24    Cohort, the authors evaluated the neurotoxic effects of heavy metals during various stages of  
25    pregnancy and concluded: “Our results support the hypothesis that exposure to...As in mid to  
26    late pregnancy may be neurodevelopmentally harmful.”

27           71.     Such results have been replicated in studies throughout the world, including  
28    China, Korea, the U.S., Europe, and Egypt, implicating arsenic, mercury, and lead in pediatric

1 diagnoses of autism and autistic behaviors, with a 2018 Chinese study concluding: “[t]he results  
2 of this study are consistent with numerous previous studies, supporting an important role for  
3 heavy metal exposure, particularly mercury, in the etiology of ASD.” Indeed, a 2015 Egyptian  
4 study noted “[e]nvironmental exposure to these toxic heavy metals, *at key times in development*,  
5 may play a **causal** role in autism.” (emphasis added).

6 72. Exposure to Toxic Heavy Metals, specifically lead, has also been repeatedly  
7 associated with the development of ADHD in children, as demonstrated by numerous studies.

8 73. No fewer than four large meta-analyses, conducted in four different continents  
9 (North America, South America, Europe and Asia), and some employing a cross-sectional  
10 design, have observed a consistent association between various metals and ADHD in children.  
11 Indeed, the authors of the meta-analysis from Spain noted that “the evidence from the studies  
12 allowed us to establish that there is an association between lead and ADHD and that even *low*  
13 *levels of lead raise the risk.*” (emphasis added).

14 74. The findings from the meta-analyses have been replicated in several Chinese  
15 studies from 2006, 2014, and 2018, respectively. Notably, the authors of the 2014 Chinese  
16 study observed that “[e]xposure to lead even at low levels correlates with attention-  
17 deficit/hyperactivity disorder (ADHD). However, lead-contaminated environments are often  
18 *contaminated with other heavy metals that could exacerbate lead-induced ADHD.*” (emphasis  
19 added). This is particularly relevant—and disturbing—as children who consumed Defendants’  
20 baby foods were repeatedly exposed to a cocktail of Toxic Heavy Metals that, synergistically,  
21 further increased their risk of developing ADHD.

22 75. Moreover, studies have observed a dose-response relationship between exposure  
23 to Toxic Heavy Metals and ADHD, as demonstrated by the 2016 Spanish study Donzelli, *et al.*  
24 Another 2016 cross-sectional study from Spain was conducted on 261 children aged 6-9 to  
25 examine the association between exposure to arsenic and ADHD. After adjusting for potential  
26 confounders, the authors observed a dose-response relationship between urine arsenic levels and  
27 inattention and impulsivity scores, concluding that “[urine arsenic] levels were associated with  
28 impaired attention/cognitive function, *even at levels considered safe.* These results provide

1 additional evidence that postnatal arsenic exposure impairs neurological function in children.”  
2 (emphasis added).

3 76. The fact that such results, and many more, have been observed in multiple  
4 studies, conducted by different researchers, at different times, in different parts of the world, in  
5 children of multiple ages, utilizing different study methods (prospective, case-control and cross-  
6 sectional epidemiological analyses) and measuring a variety of end-points (including hair,  
7 blood, and urine), strongly supports a causal relationship between exposure to Toxic Heavy  
8 Metals and the development of ASD and ADHD in children.

9 **VII. Defendants’ Baby Foods Contain Toxic Heavy Metals Capable of Interfering with**  
10 **Early Neurodevelopment**

11 77. As illustrated above, Toxic Heavy Metal exposure is capable of inflicting  
12 damage to the developing brain at extremely low doses. And, upon information and belief,  
13 Defendants manufactured and sold baby foods containing Toxic Heavy Metals that can, under  
14 certain circumstances (based upon the genetic susceptibilities, medical history, and other factors  
15 of the exposed child) interfere with a baby’s neurodevelopment sufficient to cause conditions  
16 such as ASD and ADHD.

17 78. As an initial matter, the study commissioned by HBBF and discussed above  
18 specifically evaluated the propensity for arsenic exposure through consumption of infant rice  
19 cereal to impact early life neurodevelopment. Following analyses of the levels of arsenic  
20 exposure from consumption of infant rice cereal, the authors concluded “that high consumers of  
21 infant rice cereal (i.e., infants eating three servings per day) eating products currently on the  
22 U.S. market would have a daily arsenic intake of 0.35-0.67 µg/kg bw/day...per the Tsuji et al.  
23 (2015) lower-bound estimate for an RfD for the neurodevelopmental effects of arsenic (0.4  
24 µg/kg bw/day), high consumers of infant rice cereal may also be at risk for this endpoint. Even  
25 in average consumers of infant rice cereal (i.e., one serving per day), our estimates of arsenic  
26 intakes (0.15 to 0.29 µg/kg bw/day) leave little room for exposures to arsenic from other  
27 sources.” Thus, consumption of Defendants’ baby foods, including but not limited to infant rice  
28 cereal and rice-based snack baby food products manufactured and sold by Defendants can

1 expose babies to levels of arsenic above that associated with neurodevelopmental harm in the  
2 scientific literature.

3 79. Defendants manufactured and sold baby food products that, with just a couple of  
4 servings, are capable of exposing a baby to lead levels at or above the 2.2 ug/day considered by  
5 the FDA to be associated with neurodevelopmental harm. Each source of lead exposure is  
6 cumulative—making any detectable amount of Toxic Heavy Metal in baby food a contributing  
7 factor to potential neurodevelopmental harm.

8 **VIII. Defendants Knowingly Sold Baby Foods Containing Toxic Heavy Metals and Knew**  
9 **or Should Have Known of the Risks of Such Exposures in Children and Thus**  
10 **Breeched their Duty of Care in Selling Contaminated Baby Foods**

11 80. During the time that Defendants manufactured and sold baby foods in the United  
12 States, the weight of evidence showed that Defendants' baby foods exposed babies and children  
13 to Toxic Heavy Metals. Defendants failed to disclose this risk to consumers through any  
14 means.

15 81. As discussed above, both independent testing, the Defendants' internal  
16 evaluations of their baby foods, and the Defendants' representations and disclosures to  
17 Congress and the FDA reveal the presence of Toxic Heavy Metals in Defendants' products. As  
18 such, Defendants knew or should have known that their baby foods contain Toxic Heavy Metals  
19 with an attendant risk of causing neurodevelopmental harm.

20 82. Indeed, independent testing performed in early 2019 demonstrated elevated  
21 amounts of such Toxic Heavy Metals in Baby Food products on the U.S. market, and the HBBF  
22 Report further confirmed such contamination of Defendants' baby foods. And, as the  
23 Congressional investigation found, the Defendants continued to sell their baby foods even after  
24 testing of both ingredients and finished products revealed the presence of Toxic Heavy Metals.

25 83. Moreover, the scientific literature on the dangers of Toxic Heavy Metals—  
26 particularly as it relates to adverse effects on the neurodevelopment of children—have been  
27 well known for decades. Defendants, as manufacturers and sellers of baby foods, are held to the  
28 standard of experts and responsible for keeping abreast of the latest scientific developments

1 related are held to the dangers of contaminants in their products. Defendants failed to take  
2 action to protect vulnerable children from exposure to the Toxic Heavy Metals in their foods  
3 and, thus, subjected them to the risk of brain injury which can manifest as neurodevelopmental  
4 disorders such as ASD, ADHD, and related *sequelae*.

5 84. To be clear, the Defendants are able to manufacture baby foods that do not pose  
6 such a dangerous risk to the health of infants and children by using alternative ingredients, not  
7 adding certain pre-mix minerals and vitamins high in Toxic Heavy Metals or sampling their  
8 ingredients from other sources. At the very least, Defendants were under a duty to warn  
9 unsuspecting parents of the presence of Toxic Heavy Metals in their Baby Foods.

10 **IX. Defendants' Baby Food Products Were Defective Due to Insufficient Warnings,**  
11 **Manufacturing Defects, and/or Design Defects to the Extent the Baby Food**  
12 **Products Contained Detectable Levels of Toxic Heavy Metal**

13 85. All of Defendants' baby food products that contained detectable levels of Toxic  
14 Heavy Metals (or constituted finished products wherein the ingredients contained detectable  
15 levels of Toxic Heavy Metals), assuming state of the art analytical testing, were defective as it  
16 relates to warnings because no Defendant has ever warned about the presence of Toxic Heavy  
17 Metals in their baby foods. Because discovery is ongoing, a complete list of Defendants'  
18 specific baby foods that contained detectable levels of Toxic Heavy Metals is not known at this  
19 time. Based on publicly available testing data, including data reported by HBBF and Congress,  
20 the vast majority of Defendants' products contain detectable levels of Toxic Heavy Metals in  
21 them, rendering them each defective as it relates to warnings.

22 86. Defendants' baby food products are also defective as manufactured, as they  
23 contain detectable Toxic Heavy Metals which are not supposed to be there, by design. Toxic  
24 Heavy Metals do not provide any nutritional or therapeutic value to infants or fully-grown  
25 humans. They are only poisonous to neurodevelopment. None of these baby food products, by  
26 design, should contain Toxic Heavy Metals in them and, thus, to the extent the products contain  
27 detectable levels of Toxic Heavy Metals in them, those are manufacturing defects. Based on  
28 publicly available data, most of Defendants' baby food products contain some detectable levels



1 of Toxic Heavy Metals in them.

2 87. If Defendants specifically designed their baby food products to contain Toxic  
3 Heavy Metals, meaning their presence was not the product of a manufacturing defect, then the  
4 products were defective by design. Toxic Heavy Metals should not be present in foods that are  
5 being consumed by infants and products should be designed to not have detectable levels of  
6 toxic heavy metal in them. Such designs are easily accomplished, by only using ingredients that  
7 contain non-detectable levels of Toxic Heavy Metals and by testing finished products, before  
8 release, to ensure they do not contain Toxic Heavy Metals within them. This is possible  
9 because there are examples of Defendants' finished products not containing detectable levels of  
10 Toxic Heavy Metals—even if, for that same products, there are instances where they did. Thus,  
11 Defendants were able to design baby food products to not contain detectable levels of toxic  
12 heavy metals, and to the extent that each Defendants' design contemplated there being  
13 detectable levels of Toxic Heavy Metals in baby food, the design, itself, was defective.

14 88. Whether the Defendants' products were defective due to inadequate warnings,  
15 manufacturing errors, or by design, the existing publicly available evidence indicates that  
16 consumption of Defendants' baby food products exposed Plaintiff to Toxic Heavy Metals, and  
17 that Defendants' baby food products contributed to Plaintiff's Toxic Heavy Metal burden  
18 during a critical period of infant neurodevelopment. Plaintiff, thus, alleges that this cumulative  
19 exposure from Defendants' products to Toxic Heavy Metals, substantially contributed to  
20 causing neurodevelopmental harm that manifested as ASD. Moreover, Plaintiff alleges that had  
21 these baby food products not been defective—by having sufficient warnings, being correctly  
22 manufactured, and/or designed properly—Plaintiff would not have been exposed to levels of  
23 Toxic Heavy Metals in Defendants' baby food products that would have contributed to the  
24 neurodevelopmental harm that manifested as ASD.

25 **X. Exemplary / Punitive Damages Allegations**

26 89. Defendants' conduct as alleged herein was done with reckless disregard for  
27 human life, oppression, and malice. Defendants' conduct is particularly reprehensible given  
28 that their toxic foods were directed at vulnerable babies—a population group far more



1 susceptible than adults to the neurotoxic dangers of heavy metals.

2 90. Defendants were fully aware of the safety risks of Contaminated Baby Foods,  
3 particularly the dangerous potential of Toxic Heavy Metals on neurodevelopment in infants and  
4 children. Nonetheless, Defendants deliberately crafted their label, marketing, and promotion to  
5 mislead consumers. Indeed, Defendants repeatedly market their baby foods as safe for  
6 consumption and go so far as claiming that they adhere to “the strictest standards in the world;”  
7 and provide “baby’s food full of nutrition while meeting standards strict enough for tiny  
8 tummies,” as well as other statements and representations that hold out their baby foods as safe  
9 for consumption by infants. Indeed, each Defendant falsely reassured  
10 parents/guardians/caregivers that their baby foods would foster healthy neurodevelopment when  
11 consumed even though they knew their baby foods exposed infants’ developing brains to potent  
12 neurotoxic heavy metals. In actual fact, as discussed above, Defendants routinely sold  
13 Contaminated Baby Foods, regularly flouted their own internal limits of Toxic Heavy Metals  
14 and failed to disclose to consumers that their products contained such dangerous contaminants.

15 91. This was not done by accident or through some justifiable negligence. Rather,  
16 Defendants knew they could profit by convincing consumers that their baby foods were healthy  
17 and safe for infants, and that full disclosure of presence and/or risks of the Toxic Heavy Metals  
18 present in the baby foods would limit the amount of money Defendants would make selling the  
19 products. Defendants’ object was accomplished not only through a misleading label, but  
20 through a comprehensive scheme of selective misleading research and testing, failure to test,  
21 false advertising, and deceptive omissions as more fully alleged throughout this Complaint.  
22 Parents/guardians/caregivers were denied the right to make an informed decision about whether  
23 to purchase Defendants’ baby food for their babies without knowing the full risks attendant to  
24 that use. Such conduct was done with conscious disregard of Plaintiffs’ welfare and rights.

#### 25 **PLAINTIFF’S USE AND INJURY**

26 92. Plaintiff was diagnosed with ASD at approximately 3 years of age.

27 93. Plaintiff consumed Baby Food products manufactured and/or sold by the  
28 Defendants.

94. Upon information and belief, the Baby Food products manufactured/marketed by Defendants and consumed by Plaintiff were all contaminated with substantial quantities of Toxic Heavy Metals.

95. Upon information and belief, as a direct and proximate result of consuming Defendants' Baby Foods, Plaintiff was exposed to substantial quantities of Toxic Heavy Metals.

96. As a direct and proximate result of consuming Defendants' Baby Foods and the exposure to the Toxic Heavy Metals therein – Plaintiff suffered brain injury which manifested as ASD and related *sequae*.

97. Based on prevailing scientific evidence, exposure to the Toxic Heavy Metals at the levels contained in Defendants' Baby Foods can cause brain injury which can manifest as the neurodevelopmental disorders ASD and related *sequae* in humans.

98. Had any Defendant warned Plaintiff's parents that Defendants' Baby Foods could lead to exposure to Toxic Heavy Metals or, in turn, brain injury, Plaintiff would not have consumed the Baby Foods.

99. Plaintiff alleges that as a direct and proximate result of Plaintiff's consumption of Baby Foods supplied and distributed by Defendants, Plaintiff suffered significant harm, conscious pain and suffering, physical injury and bodily impairment including, but not limited to brain injury which manifested as ASD and related *sequae*.

## CAUSES OF ACTION

### COUNT I: STRICT PRODUCTS LIABILITY – FAILURE TO WARN

100. Plaintiff incorporates by reference each allegation set forth in preceding paragraphs as if fully stated herein.

101. At all relevant times, Defendants engaged in the business of researching, testing, developing, designing, manufacturing, labeling, marketing, selling, inspecting, distributing, and promoting baby foods, which are defective and unreasonably dangerous to consumers, including Plaintiff, because they do not contain adequate warnings or instructions concerning the dangerous characteristics of baby foods in the form of the presence of Toxic Heavy Metals. These actions were under the ultimate control and supervision of Defendants. At all relevant

1 times, Defendants registered, researched, manufactured, distributed, marketed, and sold baby  
2 foods and aimed at a consumer market.

3 102. Defendants researched, tested, developed, designed, manufactured, labeled,  
4 marketed, sold, inspected, distributed, and promoted, and otherwise released into the stream of  
5 commerce their Contaminated Baby Foods, and in the course of same, directly advertised or  
6 marketed the products to consumers and end users, including Plaintiff, and therefore had a duty  
7 to warn about the presence of and risks associated with exposure to Toxic Heavy Metals from  
8 the consumption of Contaminated Baby Foods.

9 103. At all relevant times, Defendants had a duty to properly test, develop, design,  
10 manufacture, inspect, package, label, market, promote, sell, and distribute, maintain, supply,  
11 provide proper warnings, and take such steps as necessary to ensure their Contaminated Baby  
12 Foods did not cause users and consumers to suffer from unreasonable and dangerous risks.  
13 Defendants had a continuing duty to warn Plaintiff of dangers associated with exposure to  
14 Toxic Heavy Metals from consumption of the Contaminated Baby Foods. Defendants, as a  
15 manufacturer, seller, or distributor of food, are held to the knowledge of an expert in the field.

16 104. At the time of manufacture, Defendants could have provided the warnings or  
17 instructions regarding the full and complete risks of exposure to Toxic Heavy Metals in the  
18 Contaminated Baby Foods because they knew or should have known of the unreasonable risks  
19 of harm associated with the use of and/or exposure to such toxins.

20 105. At all relevant times, Defendants failed and deliberately refused to investigate,  
21 study, test, or promote the safety or to minimize the dangers to users and consumers of their  
22 product and to those who would foreseeably use or be harmed by exposure to the Toxic Heavy  
23 Metals in Defendants' Baby Foods.

24 106. Even though Defendants knew or should have known that the presence of Toxic  
25 Heavy Metals in Contaminated Baby Foods posed a risk of harm, they failed to exercise  
26 reasonable care to warn of the dangerous risks associated with use and exposure to the toxins in  
27 the products. The neurotoxic characteristic of Toxic Heavy Metals contained in Defendants'  
28 Contaminated Baby Foods, as described above, were known to Defendants, or scientifically

1 knowable to Defendants through appropriate research and testing by known methods, at the  
2 time they distributed, supplied, or sold the products, and were not known to end users and  
3 consumers, such as Plaintiff. The product warnings for Contaminated Baby Foods in effect  
4 during the time period Plaintiff consumed those foods were inadequate, both substantively and  
5 graphically, to alert consumers to the presence of and health risks associated with exposure to  
6 the Toxic Heavy Metals from Contaminated Baby Food consumption.

7 107. At all relevant times, Defendants' Contaminated Baby Foods reached the  
8 intended consumers, handlers, and users or other persons coming into contact with these  
9 products, including Plaintiff, without substantial change in their condition as manufactured,  
10 sold, distributed, labeled, and marketed by Defendants.

11 108. Plaintiff was exposed to the Toxic Heavy Metals in Defendants' Contaminated  
12 Baby Foods without knowledge of the potential for such exposure to Toxic Heavy Metals from  
13 consumption of the products and the dangerous characteristics of the toxins.

14 109. At all relevant times, Plaintiff was exposed to the Toxic Heavy Metals in the  
15 Defendants' Contaminated Baby Foods while consuming the foods for their intended or  
16 reasonably foreseeable purposes, without knowledge of their dangerous characteristics.

17 110. Plaintiff could not have reasonably discovered the defects and risks associated  
18 with exposure to the Toxic Heavy Metals in the Contaminated Baby Foods prior to or at the  
19 time of Plaintiff consuming those foods. Plaintiff relied upon the skill, superior knowledge, and  
20 judgment of Defendants to know about and disclose serious health risks associated with  
21 exposure to the toxins in Defendants' products.

22 111. The information that Defendants did provide or communicate failed to contain  
23 relevant warnings, hazards, and precautions that would have enabled consumers such as  
24 Plaintiffs to avoid consuming the products and, in turn, exposure to the Toxic Heavy Metals.  
25 Instead, Defendants disseminated information that was inaccurate, false, and misleading, and  
26 which failed to communicate accurately or adequately the comparative severity, duration, and  
27 extent of the risk of injuries with use of and/or exposure to the Toxic Heavy Metals in the  
28 Contaminated Baby Foods; continued to aggressively promote the safety of their products, even

1 after they knew or should have known of the unreasonable risks from use or exposure; and  
2 concealed, downplayed, or otherwise suppressed, through aggressive marketing and promotion,  
3 any information or research about the risks and dangers of exposure to Toxic Heavy Metals  
4 from consumption of Contaminated Baby Foods.

5 112. This alleged failure to warn is not limited to the information contained on  
6 Contaminated Baby Foods labeling. The Defendants were able, in accord with federal law, to  
7 comply with relevant state law by disclosing the known risks associated with exposure to Heavy  
8 Metals in Contaminated Baby Foods through other non-labeling mediums, i.e., promotion,  
9 advertisements, public service announcements, and/or public information sources. But the  
10 Defendants did not disclose these known risks through any medium. The ability to provide such  
11 warnings is not prohibited by any federal law.

12 113. Furthermore, Defendants possess a First Amendment Right to make truthful  
13 statements about the products they sell, and no law could lawfully restrict that constitutional  
14 right. This included making statements about the presence of and risks associated with Toxic  
15 Heavy Metals in Contaminated Baby Foods.

16 114. Had Defendants provided adequate warnings and instructions and properly  
17 disclosed and disseminated the risks associated with exposure to the toxins in their  
18 Contaminated Baby Foods, Plaintiffs could have avoided the risk of developing injuries and  
19 could have obtained or used alternative products. However, as a result of Defendants'  
20 concealment of the dangers posed by the Toxic Heavy Metals in their Contaminated Baby  
21 Foods, Plaintiff could not have averted their exposures.

22 115. Defendants' conduct, as described above, was reckless. Defendants risked the  
23 lives of babies and children, including Plaintiff, with knowledge of the safety problems  
24 associated with Contaminated Baby Foods, and suppressed this knowledge from the general  
25 public. Defendants made conscious decisions not to warn or inform the unsuspecting public.

26 116. The Defendants' lack of adequate warnings and instructions accompanying their  
27 Contaminated Baby Foods caused Plaintiff's injuries.

28 117. As a direct and proximate result of the Defendants' failure to provide an

adequate warning of the risks of exposure to the Toxic Heavy Metals in their Contaminated Baby Foods, Plaintiff has been injured, sustained severe and permanent pain, suffering, disability, impairment, loss of enjoyment of life, economic loss and damages including, but not limited to past and future medical expenses, lost income, and other damages.

118. **WHEREFORE**, Plaintiff respectfully requests this Court enter judgment in Plaintiff's favor for damages, together with interest, costs herein incurred, attorneys' fees and all such other and further relief as this Court deems just and proper.

**COUNT II: STRICT PRODUCTS LIABILITY – MANUFACTURING DEFECT**

119. Plaintiff incorporates by reference each allegation set forth in preceding paragraphs as if fully stated herein.

120. At all times herein mentioned, Defendants designed, manufactured, tested, marketed, sold, handled, and distributed the Contaminated Baby Foods consumed by Plaintiff.

121. At all relevant times, the Contaminated Baby Foods consumed by Plaintiff were expected to and did reach Plaintiff without a substantial change in their condition as manufactured, handled, distributed, and sold by Defendants.

122. At all relevant times, the Contaminated Baby Foods consumed by Plaintiff were used in a manner that was foreseeable and intended by Defendants.

123. The Contaminated Baby Foods consumed by Plaintiff were not reasonably safe for their intended use and were defective with respect to their manufacture, as described herein, in that Defendants deviated materially from their design and manufacturing specifications and/or such design and manufacture posed an unreasonable risk of harm to Plaintiffs.<sup>1</sup> Baby food should not, by design, contain any detectable levels of Toxic Heavy Metals in them. Thus, Defendants' Contaminated Baby Foods contain manufacturing defects.

124. The Defendants' Contaminated Baby Foods contained Toxic Heavy Metals because, while in the control and possession of Defendants, they manufactured ingredients and used manufacturing processes that result in the finished product being contaminated with Toxic

<sup>1</sup> If, through discovery and further litigation, it is discovered that Defendants' baby food products contained detectable levels of Toxic Heavy Metals by design, then Plaintiff will pursue a design defect claim (Count III) in the alternative.

1 Heavy Metals. Had Defendants properly manufactured (directly or through co-manufacturers)  
2 the baby foods, they would not have contained detectable levels of Toxic Heavy Metals in them  
3 and, thus, would not have contained a manufacturing defect.

4 125. Nothing under federal law limited or restricted Defendants from taking action to  
5 reduce or eliminate the Toxic Heavy Metals from being present in their baby foods.

6 126. This manufacturing defect caused Plaintiff to be exposed to Toxic Heavy Metals  
7 through ingestion of the Contaminated Baby Foods which, in turn, caused neurodevelopmental  
8 harm that manifested as ASD.

9 127. The exposure to the Toxic Heavy Metals in the Contaminated Baby Foods  
10 creates risks to the health and safety of babies that are far more significant than the risks posed  
11 by non- Contaminated Baby Food products, and which far outweigh the utility of the  
12 Contaminated Baby Foods products because of Defendants' manufacturing defects.

13 128. Defendants have intentionally and recklessly manufactured the Contaminated  
14 Baby Foods with wanton and willful disregard for the rights and health of Plaintiff, and with  
15 malice, placing their economic interests above the health and safety of Plaintiff.

16 129. As a direct and proximate result of the Defendants' defective manufacture of the  
17 Contaminated Baby Foods, Plaintiff has been injured, sustained severe and permanent pain,  
18 suffering, disability, impairment, loss of enjoyment of life, economic loss and damages  
19 including, but not limited to medical expenses, lost income, and other damages.

20 130. **WHEREFORE**, Plaintiff respectfully requests this Court enter judgment in  
21 Plaintiff's favor for damages, together with interest, costs herein incurred, attorneys' fees and  
22 all such other and further relief as this Court deems just and proper.

23 **COUNT III: STRICT PRODUCTS LIABILITY – DESIGN DEFECT**

24 131. Plaintiff incorporates by reference each allegation set forth in preceding  
25 paragraphs as if fully stated herein.

26 132. At all times herein mentioned, Defendants designed, manufactured, tested,  
27 marketed, sold, handled, and distributed the Contaminated Baby Foods consumed by Plaintiff.  
28 These actions were under the ultimate control and supervision of Defendants.

1           133. At all relevant times, Defendants' Baby Food products were designed and  
2 labeled in an unsafe, defective, and inherently dangerous manner that was dangerous for use or  
3 consumption by infants and babies, including Plaintiff.

4           134. Defendants' Contaminated Baby Food products as researched, tested, developed,  
5 designed, licensed, manufactured, packaged, labeled, distributed, sold, and marketed by  
6 Defendants were defective in design and formulation in that, when they were placed into the  
7 stream of commerce, they were unreasonably dangerous and dangerous to an extent beyond that  
8 which an ordinary consumer would contemplate.

9           135. Defendants' Contaminated Baby Food products, as researched, tested,  
10 developed, designed, licensed, manufactured, packaged, labeled, distributed, sold, and marketed  
11 by Defendants were defective in design and formulation in that, when they left the hands of  
12 Defendants, the foreseeable risks exceeded the alleged benefits associated with their design and  
13 formulation.

14           136. At all relevant times, the Contaminated Baby Food products consumed by  
15 Plaintiff were expected to and did reach Plaintiff without a substantial change in its condition as  
16 designed, manufactured, handled, distributed, and sold by Defendants.

17           137. At all relevant times, Defendants knew or had reason to know that their  
18 Contaminated Baby Food products were defective and were inherently dangerous and unsafe  
19 when used in the manner instructed and provided by Defendants.

20           138. Therefore, at all relevant times, Defendants' Baby Food products, as researched,  
21 tested, developed, designed, registered, licensed, manufactured, packaged, labeled, distributed,  
22 sold and marketed by Defendants were defective in design and formulation, in one or more of  
23 the following ways:

24                 1. When placed in the stream of commerce, Defendants' Contaminated  
25 Baby Food products were unreasonably dangerous in that they contained Toxic Heavy Metals  
26 that posed a risk of causing interference with neurodevelopment in babies that manifests as the  
27 neurodevelopmental disorders ASD, ADHD and related *sequelae* when used in a reasonably  
28 anticipated manner;



2. When placed in the stream of commerce, Defendants' designed Contaminated Baby Food products to contain unreasonably dangerous design defects and were not reasonably safe when used in a reasonably anticipated or intended manner;

3. Defendants, by design, did not sufficiently test, investigate, or study their Contaminated Baby Food products;

4. Exposure to the Toxic Heavy Metals in Defendants' Contaminated Baby Food products present a risk of harmful effects that outweigh any potential utility stemming from their use;

5. Defendants, by design, did not conduct adequate post-marketing surveillance of their Contaminated Baby Food products which would have alerted the public to risks; and

6. Defendants could have employed safer alternative designs and formulations for Contaminated Baby Foods, such as ensuring the baby food did not have any detectable level of Toxic Heavy Metals.

139. Plaintiff consumed Defendants' Contaminated Baby Food products in an intended or reasonably foreseeable manner without knowledge of their dangerous characteristics.

140. Defendants' Contaminated Baby Food products were and are more dangerous than alternative products, and Defendants could have designed their Contaminated Baby Food products to avoid harm to children. Indeed, at the time Defendants designed the Contaminated Baby Food products, the state of the industry's scientific knowledge was such that a less risky design or formulation was attainable.

141. At the time the Contaminated Baby Food products left Defendants' control, there was a practical, technically feasible, and safer alternative design that would have prevented the harm without substantially impairing the reasonably anticipated or intended function of Defendants' Contaminated Baby Foods.

142. Defendants intentionally and recklessly defectively designed the Contaminated Baby Foods with wanton and willful disregard for the rights and health of Plaintiff, and with

malice, placing their economic interests above the health and safety of Plaintiff.

143. The design defects in Defendants' Contaminated Baby Foods were substantial factors in causing Plaintiff's injuries.

144. As a direct and proximate result of the Defendants' defective design of the Contaminated Baby Foods, Plaintiff has been injured, sustained severe and permanent pain, suffering, disability, impairment, loss of enjoyment of life, economic loss and damages including, but not limited to medical expenses, lost income, and other damages.

145. **WHEREFORE**, Plaintiff respectfully requests this Court enter judgment in Plaintiff's favor for damages, together with interest, costs herein incurred, attorneys' fees and all such other and further relief as this Court deems just and proper.

#### **COUNT IV: NEGLIGENCE – FAILURE TO WARN**

146. Plaintiff incorporates by reference each allegation set forth in preceding paragraphs as if fully stated herein.

147. At all relevant times, Defendants engaged in the business of testing, developing, designing, manufacturing, marketing, selling, distributing, and promoting baby foods. Defendants knew, or, by the exercise of reasonable care, should have known that their Contaminated Baby Foods are not accompanied with adequate warnings concerning the dangerous characteristics of exposure to Toxic Heavy Metals from consumption. These actions were under the ultimate control and supervision of Defendants.

148. Defendants researched, developed, designed, tested, manufactured, inspected, labeled, distributed, marketed, promoted, sold, and otherwise released into the stream of commerce their Contaminated Baby Foods, and in the course of same, directly advertised or marketed the products to consumers and end users, including Plaintiff, and therefore had a duty to warn of the risks associated with the presence of and exposure to Toxic Heavy Metals from consumption of Contaminated Baby Foods.

149. At all relevant times, Defendants had a duty to properly test, develop, design, manufacture, inspect, package, label, market, promote, sell, distribute, maintain, supply, provide proper warnings, and take such steps as necessary to ensure their Contaminated Baby Foods did

1 not cause users and consumers to suffer from unreasonable and dangerous risks. Defendants  
2 had a continuing duty to warn Plaintiff of dangers associated with the presence of and exposure  
3 to Toxic Heavy Metals from consumption of Contaminated Baby Foods. Defendants, as a  
4 manufacturer, seller, or distributor of food products, are held to the knowledge of an expert in  
5 the field.

6 150. At the time of manufacture, Defendants could have provided warnings regarding  
7 the presence of and risks of exposure to Toxic Heavy Metals from consumption of  
8 Contaminated Baby Foods because they knew or should have known exposure to Toxic Heavy  
9 Metals from consumption of Contaminated Baby Foods was dangerous, harmful and injurious  
10 when the Contaminated Baby Foods were consumed by Plaintiff in a reasonably foreseeable  
11 manner.

12 151. At all relevant times, Defendants failed and deliberately refused to investigate,  
13 study, test, or promote the safety or to minimize the dangers to users and consumers of their  
14 products and to those who would foreseeably use or be harmed by Defendants' Contaminated  
15 Baby Foods.

16 152. Defendants knew or should have known that exposure to Toxic Heavy Metals  
17 from consumption of Contaminated Baby Foods posed a risk of harm, but failed to exercise  
18 reasonable care to warn of the dangerous risks associated with use and exposure to the toxins in  
19 the products. The dangerous propensities of exposure to Toxic Heavy Metals from consumption  
20 of the Contaminated Baby Foods, as described above, were known to Defendants, or  
21 scientifically knowable to Defendants through appropriate research and testing by known  
22 methods, at the time they distributed, supplied, or sold the products, and were not known to end  
23 users and consumers, such as Plaintiff.

24 153. At all relevant times, Plaintiff was exposed to Toxic Heavy Metals through  
25 consumption of the Contaminated Baby Foods while using the products for their intended or  
26 reasonably foreseeable purposes, without knowledge of their dangerous characteristics.

27 154. Defendants knew or should have known that the non-extant warnings  
28 disseminated with their Contaminated Baby Foods were inadequate, failed to communicate

1 adequate information on the presence of and dangers of exposure to toxins contained therein,  
2 and failed to communicate warnings and instructions that were appropriate and adequate to  
3 render the products safe for their ordinary, intended and reasonably foreseeable uses.

4 155. The information that Defendants did provide or communicate failed to contain  
5 relevant warnings, hazards, and precautions that would have enabled consumers such as  
6 Plaintiffs to avoid using the product and, in turn, prevented exposure to the Toxic Heavy Metals  
7 contained therein. Instead, Defendants disseminated information that was inaccurate, false, and  
8 misleading, and which failed to communicate accurately or adequately the comparative severity,  
9 duration, and extent of the risk of injuries with use of and/or exposure to the Toxic Heavy  
10 Metals in the Contaminated Baby Foods; continued to aggressively promote the efficacy of their  
11 products, even after they knew or should have known of the unreasonable risks from use or  
12 exposure to the toxins contained therein; and concealed, downplayed, or otherwise suppressed,  
13 through aggressive marketing and promotion, any information or research about the risks and  
14 dangers of exposure to Toxic Heavy Metals from consumption of the Contaminated Baby  
15 Foods.

16 156. A reasonable company under the same or similar circumstance would have  
17 warned and instructed of the dangers of exposure to Toxic Heavy Metals from consumption of  
18 Contaminated Baby Foods.

19 157. This alleged failure to warn is not limited to the information contained on the  
20 labeling of Defendants' Contaminated Baby Foods. Defendants were able, in accord with  
21 federal law, to comply with relevant state law by disclosing the known risks associated with  
22 exposure to Toxic Heavy Metals from consumption of Contaminated Baby Foods through other  
23 non-labeling mediums, i.e., promotion, advertisements, public service announcements, and/or  
24 public information sources. But the Defendants did not disclose these known risks through any  
25 medium.

26 158. Furthermore, Defendants possess a First Amendment Right to make truthful  
27 statements about the products they sell, and no law could lawfully restrict that constitutional  
28 right.

159. Had Defendants provided adequate warnings and instructions and properly disclosed and disseminated the risks associated with the presence of and exposure to Toxic Heavy Metals in the Contaminated Baby Foods, Plaintiff could have avoided the risk of developing injuries and could have obtained or used alternative products. However, as a result of Defendants' concealment of the dangers posed by their Contaminated Baby Foods, Plaintiff could not have averted their injuries.

160. Defendants' conduct, as described above, was reckless. Defendants risked the lives of consumers and users of their products, including Plaintiff, with knowledge of the safety problems associated with Contaminated Baby Foods, and suppressed this knowledge from the general public. Defendants made conscious decisions not to warn or inform the unsuspecting public.

161. The Defendants' lack of adequate warnings and instructions accompanying their Contaminated Baby Foods were a substantial factor in causing Plaintiff's injuries.

162. As a direct and proximate result of the Defendants' failure to provide an adequate warning of the risks of exposure to Toxic Heavy Metals from consumption of Contaminated Baby Foods, Plaintiff has been injured, sustained severe and permanent pain, suffering, disability, impairment, loss of enjoyment of life, economic loss and damages including, but not limited to past and future medical expenses, lost income, and other damages.

163. **WHEREFORE**, Plaintiff respectfully requests this Court enter judgment in Plaintiff's favor for damages, together with interest, costs herein incurred, attorneys' fees and all such other and further relief as this Court deems just and proper.

#### **COUNT V: NEGLIGENCE – MANUFACTURING**

164. Plaintiff incorporates by reference each allegation set forth in preceding paragraphs as if fully stated herein.

165. At all relevant times, the Defendants manufactured, tested, marketed, sold, and distributed the Contaminated Baby Foods that Plaintiff consumed.

166. The Defendants had a duty to exercise reasonable care, in the manufacturing, testing, marketing, sale, and distribution of baby foods.

1           167. The Defendants knew or, by the exercise of reasonable care, should have known,  
2 that exposure to Toxic Heavy Metals from consumption of Contaminated Baby Foods rendered  
3 the foods carelessly manufactured, dangerous, harmful and injurious when used by Plaintiff in a  
4 reasonably foreseeable manner.

5           168. The Defendants knew or, by the exercise of reasonable care, should have known,  
6 ordinary consumers such as Plaintiff would not have realized the potential risks and dangers of  
7 exposure to Toxic Heavy Metals from consumption of Contaminated Baby Foods.

8           169. Without limitation, examples of the manner in which Defendants breached their  
9 duty to exercise reasonable care in manufacturing Contaminated Baby Foods, included:

- 10               1. Failure to adequately inspect/test the Contaminated Baby Foods, and  
11 their ingredients, during and after the manufacturing process;
- 12               2. Failure to implement procedures that would reduce or eliminate Toxic  
13 Heavy Metals in baby foods;
- 14               3. Failure to investigate suppliers and ingredient sources to reduce and  
15 eliminate the risk of ingredients containing Toxic Heavy Metals; and
- 16               4. Failure to avoid using ingredients free from, or which contain far less,  
17 Toxic Heavy Metals to manufacture baby food.

18           170. A reasonable manufacturer under the same or similar circumstances would have  
19 implemented appropriate manufacturing procedures to better ensure the quality and safety of  
20 their product.

21           171. Plaintiff was harmed directly and proximately by the Defendants' failure to use  
22 reasonable care in the manufacture of their Contaminated Baby Foods. Such harm includes  
23 exposure to Toxic Heavy Metals, which can cause or contribute to interference with early  
24 neurodevelopment which manifests as ASD, and related *sequelae*.

25           172. Defendants' improper manufacturing of Baby Foods was willful, wanton,  
26 malicious, and conducted with reckless disregard for the health and safety of users of the  
27 Contaminated Baby Foods, including Plaintiff.

28           173. The defects in Defendants' Contaminated Baby Foods were substantial factors in

1 causing Plaintiff's injuries.

2 174. As a direct and proximate result of the Defendants' improper manufacturing of  
3 Contaminated Baby Foods, Plaintiff has been injured, sustained severe and permanent pain,  
4 suffering, disability, impairment, loss of enjoyment of life, economic loss and damages  
5 including, but not limited to past and future medical expenses, lost income, and other damages.

6 175. **WHEREFORE**, Plaintiff respectfully requests this Court enter judgment in  
7 Plaintiff's favor for damages, together with interest, costs herein incurred, attorneys' fees and  
8 all such other and further relief as this Court deems just and proper.

9 **COUNT VI: NEGLIGENCE – PRODUCT DESIGN**

10 176. Plaintiff incorporates by reference each allegation set forth in preceding  
11 paragraphs as if fully stated herein.

12 177. Defendants knew or, by the exercise of reasonable care, should have known,  
13 ordinary consumers such as Plaintiff would not have realized the potential risks and dangers of  
14 Contaminated Baby Foods.

15 178. The Defendants owed a duty to all reasonably foreseeable users to design a safe  
16 product.

17 179. The Defendants breached their duty by failing to use reasonable care in the  
18 design of Contaminated Baby Foods because the products exposed babies to Toxic Heavy  
19 Metals.

20 180. The Defendants breached their duty by failing to use reasonable care in the  
21 design of Contaminated Baby Foods by negligently designing the foods with ingredients and/or  
22 components contaminated with Toxic Heavy Metals.

23 181. The Defendants breached their duty by failing to use reasonable care in the  
24 design of Contaminated Baby Foods by negligently designing and formulation, in one or more  
25 of the following ways:

26 1. When placed in the stream of commerce, Defendants' Contaminated  
27 Baby Foods were defective in design and formulation, and, consequently, dangerous to an  
28 extent beyond that which an ordinary consumer would contemplate;

1                   2.       When placed in the stream of commerce, Defendants' Contaminated  
2 Baby Foods were unreasonably dangerous in that they were hazardous and posed a risk of  
3 neurodevelopmental disorders and other serious illnesses when used in a reasonably anticipated  
4 manner;

5                   3.       When placed in the stream of commerce, Defendants' Contaminated  
6 Baby Foods contained unreasonably dangerous design defects and were not reasonably safe  
7 when used in a reasonably anticipated or intended manner;

8                   4.       Defendants did not sufficiently test, investigate, or study their  
9 Contaminated Baby Foods and, specifically, the content of Toxic Heavy Metals in the  
10 ingredients used to manufacture the foods and/or the finished products;

11                  5.       Defendants did not sufficiently test, investigate, or study their  
12 Contaminated Baby Foods and, specifically, the ability for those foods to expose babies to  
13 Toxic Heavy Metals; and

14                  6.       Exposure to the Toxic Heavy Metals in Contaminated Baby Foods  
15 presents a risk of harmful effects that outweigh any potential utility stemming from the use of  
16 the products;

17       182.     Defendants knew or should have known at the time of marketing Contaminated  
18 Baby Foods that exposure to Toxic Heavy Metals contained in the Baby Foods could result in  
19 interference with early neurodevelopment that that manifests as ASD, ADHD and other severe  
20 illnesses and injuries.

21       183.     Defendants, by design, did not conduct adequate post-marketing surveillance of  
22 their Contaminated Baby Foods.

23       184.     Defendants could have employed safer alternative designs and formulations. For  
24 example, the Defendants could have avoided use of certain ingredients contaminated with Toxic  
25 Heavy Metals, avoided using pre-mix vitamins contaminated with Toxic Heavy Metals, and/or  
26 sampled their ingredients from other sources.

27       185.     The Defendants breached their duty by failing to use reasonable care by failing  
28 to use cost effective, reasonably feasible alternative designs. There was a practical, technically



1 feasible, and safer alternative design that would have prevented the harm without substantially  
2 impairing the reasonably anticipated or intended function of Defendants' Contaminated Baby  
3 Foods.

4 186. A reasonable company under the same or similar circumstances would have  
5 designed a safer product.

6 187. Plaintiff was harmed directly and proximately by the Defendants' failure to use  
7 reasonable care in the design of their Contaminated Baby Foods. Such harm includes exposure  
8 to Toxic Heavy Metals, which can cause or contribute to interference with neurodevelopment  
9 that manifests as ASD, and related *sequelae*.

10 188. Defendants' defective design of Contaminated Baby Foods was willful, wanton,  
11 malicious, and conducted with reckless disregard for the health and safety of consumers of the  
12 Baby Foods, including Plaintiff.

13 189. The defects in Defendants' Contaminated Baby Foods were substantial factors in  
14 causing Plaintiff's injuries.

15 190. As a direct and proximate result of the Defendants' negligent design of the  
16 Contaminated Baby Foods, Plaintiff has been injured, sustained severe and permanent pain,  
17 suffering, disability, impairment, loss of enjoyment of life, economic loss and damages  
18 including, but not limited to past and future medical expenses, lost income, and other damages.

19 191. **WHEREFORE**, Plaintiff respectfully requests this Court enter judgment in  
20 Plaintiff's favor for damages, together with interest, costs herein incurred, attorneys' fees and  
21 all such other and further relief as this Court deems just and proper.

## 22 **COUNT VII: GENERAL NEGLIGENCE**

23 192. Plaintiff incorporates by reference each allegation set forth in preceding  
24 paragraphs as if fully stated herein.

25 193. Plaintiff pleads claims for negligence under all theories that may be actionable  
26 under any applicable state laws.

27 194. Defendants owed Plaintiff a duty to act with reasonable care.

28 1. Defendants owed a duty because they distributed and promoted their

1 products as safe for children to consume.

2           2. Defendants owed a duty because their conduct created a risk of harm to  
3 Plaintiffs and caused Plaintiff actual harm.

4           3. Defendants owed a duty because the risk of harm to Plaintiff was  
5 embedded in, and an inherent component of, their negligent business practices.

6           4. Defendants owed a duty because they designed, manufactured,  
7 controlled, distributed, and sold their products to Plaintiff.

8           195. Defendants breached their duty to Plaintiff.

9           196. Defendants' negligence includes, but is not limited to, their marketing,  
10 designing, manufacturing, producing, supplying, inspecting, testing, selling and/or distributing  
11 Contaminated Baby Foods in one or more of the following respects:

12           1. Failure to implement procedures that would reduce or eliminate Toxic  
13 Heavy Metals in baby foods;

14           2. Failure to investigate suppliers and ingredient sources to reduce and  
15 eliminate the risk of ingredients containing Toxic Heavy Metals; and

16           3. Failure to avoid using ingredients free from, or which contain far less,  
17 Toxic Heavy Metals to manufacture baby food.

18           4. When placed in the stream of commerce, Defendants' Contaminated  
19 Baby Foods were defective in design and formulation, and, consequently, dangerous to an  
20 extent beyond that which an ordinary consumer would contemplate;

21           5. When placed in the stream of commerce, Defendants' Contaminated  
22 Baby Foods were unreasonably dangerous in that they were hazardous and posed a risk of  
23 neurodevelopmental disorders and other serious illnesses when used in a reasonably anticipated  
24 manner;

25           6. When placed in the stream of commerce, Defendants' Contaminated  
26 Baby Foods contained unreasonably dangerous design defects and were not reasonably safe  
27 when used in a reasonably anticipated or intended manner;

28           7. Defendants, by design, did not conduct adequate post-marketing

1 surveillance of their Contaminated Baby Food products which would have alerted the public to  
2 risks; and

3 8. Defendants did not sufficiently test, investigate, or study their  
4 Contaminated Baby Foods and, specifically, the ability for those foods to expose babies to  
5 Toxic Heavy Metals;

6 9. Defendants could have employed safer alternative designs and  
7 formulations for Contaminated Baby Foods, such as ensuring the baby food did not have any  
8 detectable level of Toxic Heavy Metal.

9 10. Defendants did not sufficiently test, investigate, or study their  
10 Contaminated Baby Foods and, specifically, the content of Toxic Heavy Metals in the  
11 ingredients used to manufacture the foods and/or the finished products; and

12 11. Exposure to the Toxic Heavy Metals in Contaminated Baby Foods  
13 presents a risk of harmful effects that outweigh any potential utility stemming from the use of  
14 the products;

15 197. Defendants knew or should have known that their products contained detectable  
16 levels of heavy metals that created an unreasonable risk of harm to children who consumed their  
17 products.

18 198. At all relevant times, the Defendants knew or should have known that the  
19 Products were unreasonably dangerous and defective when put to their reasonably anticipated  
20 use.

21 199. As a proximate result of Defendants' negligence, Plaintiff has been injured,  
22 sustained severe and permanent pain, suffering, disability, impairment, loss of enjoyment of  
23 life, economic loss, and damages including, but not limited to past and future medical expenses,  
24 lost income, and other damages.

25 200. **WHEREFORE**, Plaintiff respectfully requests this Court enter judgment in  
26 Plaintiff's favor for damages, together with interest, costs herein incurred, attorneys' fees and  
27 all such other and further relief as this Court deems just and proper.

28 ///

**JURY TRIAL DEMAND**

201. Plaintiff demands a trial by jury on all the triable issues within this pleading.

**PRAYER FOR RELIEF**

202. WHEREFORE, Plaintiff requests that the Court enter judgment in Plaintiff's favor and against the Defendants for:

- a. actual or compensatory damages in such amount to be determined at trial and as provided by applicable law;
- b. exemplary and punitive damages sufficient to punish and deter the Defendants and others from future wrongful practices;
- c. pre-judgment and post-judgment interest;
- d. costs including reasonable attorneys' fees, court costs, and other litigation expenses; and
- e. any other relief the Court may deem just and proper.

Respectfully submitted,

Dated: February 3, 2025

**WISNER BAUM, LLP**

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